

## Message Text

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ACTION XMB-04

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DEPT PASS TO EXIMBANK FOR SAUER FROM CASEY

E.O. 11652: N/A

TAGS: EFIN, EEC, ETRD

SUBJECT: EXPORT CREDIT GENTLEMEN'S AGREEMENT -- MAY 12-13

PRINCIPALS' MEETING

1. LAST NIGHT IT SEEMED DESIRABLE TO PRESENT A PRECISE STATEMENT OF EXIMBANK'S NEGOTIATING LATITUDE. TELEPHONE ME. WOULD APPRECIATE YOUR DISCUSSING FOLLOWING STATEMENT WITH DIRECTORS AND COUNCIL AND TELEPHONING ME WITH ANY REACTIONS OR SUGGESTIONS WHICH EMERGE.

2. QUOTE: I WOULD LIKE TO STATE AS PRECISELY AS POSSIBLE WHAT THE EXPORT IMPORT BANK OF THE U.S. IS ABLE TO DO IN ADHERING TO A GENTLEMEN'S AGREEMENT. WE HAVE MADE THESE POSITIONS CLEAR:

WE CAN NOT AGREE IN ADVANCE TO ADHERE TO MATURITY LIMITATIONS IN ALL EVENTS. WE CAN AGREE THAT STIPULATED MATURITIES WILL ONLY BE EXCEEDED AT MARKET RATES OR AGREED UPON RATES WHICH WILL BE ABOVE THE MINIMUM LEVELS AGREED UPON AS APPLICABLE TO TRANSACTIONS FOR LESS THAN THOSE MATURITIES.

THERE WOULD BE AN UNEQUAL APPLICATION OF THE AGREEMENT IF WE WERE TO ACCEPT MATURITY LIMITATIONS IN RICH COUNTRIES

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OF 5 YEARS AND OTHERS WERE TO CONTINUE LENDING AT SUB-MARKET

RATES BELOW 5 YEARS. WE MAKE NO SUB-MARKET LOANS BELOW 5 YEARS. OTHER COUNTRIES, AS WE UNDERSTAND IT, MAKE 70 AND 80 PERCENT OF THEIR LOANS BELOW 5 YEARS. THAT INEQUALITY WOULD DISAPPEAR IF EVERYONE REFRAINED FROM BELOW MARKET RATES IN RICH COUNTRIES. OTHERWISE, EQUITY WOULD APPEAR TO REQUIRE AN 8 1/2 MATURITY LIMITATION IN RICH COUNTRIES WITH FLEXIBILITY TO EXCEED THAT MATURITY AT HIGHER INTEREST RATES.

MATURITY LIMITATIONS SHOULD NOT APPLY TO GUARANTEES FOR WHICH AN APPROPRIATE ANNUAL FEE IS CHARGED AND WHICH DO NOT SUPPORT SUB-MARKET INTEREST RATES. FOR THIS PURPOSE SUB-MARKET INTEREST RATES MIGHT BE DEFINED AS RATES BELOW THE GOVERNMENT BORROWING RATE FOR COMPARABLE MATURITIES OR BELOW STIPULATED LEVELS. THIS POSITION HAS BEEN STATED FROM THE BEGINNING ALTHOUGH IT HAS NOT MADE ITS WAY INTO THE DRAFT. JUST AS WE CANNOT AGREE NOT TO FINANCE IN ALL EVENTS, WE SIMILARLY CANNOT AGREE NOT TO GUARANTEE. WE CAN AGREE NOT TO GUARANTEE AT SUB-MARKET RATES OR FOR BELOW MINIMUM GUARANTEE FEES. MINIMUM GUARANTEE FEES COULD BE 3/4 PERCENT/PER YEAR UP TO 8 1/2 AND 10 YEARS, 1 PERCENT FOR 2 YEARS BEYOND THAT, 1 1/4 PERCENT FOR 5 YEARS BEYOND THAT AND 1 1/2 PERCENT BEYOND A 5-YEAR EXTENSION.

EXIMBANK TAKES THESE POSITIONS BECAUSE CONGRESS BY LAW HAS MADE ITS FIVE DIRECTORS RESPONSIBLE FOR LENDING AND GUARANTEEING CREDIT TO FOSTER EXPORTS. THESE DIRECTORS CANNOT FLATLY OBLIGATE THEMSELVES TO DENY FINANCING WHICH MAY BE CALLED FOR AND JUSTIFIED BY THE ECONOMICS OF A PROJECT IN THE FUTURE. THEY CAN AGREE NOT TO FINANCE AT SUB-MARKET INTEREST RATES. CONGRESS, IN THE LEGISLATIVE HISTORY OF THE EXPORT IMPORT BANK LAW, WAS EXPLICIT IN STATING THAT THERE ARE TO BE NO LIMITATIONS ON THE REPAYMENT TERMS WHICH THE BANK'S DIRECTORS MAY OFFER FOR THE PURPOSE OF FACILITATING AN EXPORT. THE PARTIES TO THE GENTLEMEN'S AGREEMENT RECOGNIZE THAT THERE ARE PRODUCTS AND PROJECTS -- JET TRANSPORT SHIPS, NUCLEAR REACTORS -- WHICH REQUIRE AND JUSTIFY MATURITIES BEYOND THE LIMITS PROPOSED FOR THIS AGREEMENT. THE DIRECTORS OF EXIMBANK CANNOT PUT THEMSELVES IN A POSITION WHERE NEW TECHNOLOGIES LIKE COAL LIQUIFICATION APPARATUS OR ANYTHING ELSE COULD NOT BE FINANCED ON APPROPRIATE MATURITIES WITHOUT TERMINATING THE GENTLEMEN'S AGREEMENT.

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WITHIN THOSE LIMITATIONS, EXIMBANK WANTS TO MAKE AN AGREEMENT AS COMPREHENSIVE AS POSSIBLE AND FULLY RESPONSIVE TO THE PURPOSE OF LIMITING THE COST OF OFFICIAL EXPORT CREDIT. TWO APPROACHES ARE SUGGESTED:

1. AN AGREEMENT WHICH WOULD SET STIPULATED

MATURITIES BUT WHICH WOULD PERMIT THOSE MATURITIES TO BE EXCEEDED AT INTEREST RATES SUITABLY ESCALATED ABOVE THE MINIMUM FOR LOWER MATURITIES TO REFLECT THE VALUE AND THE COST OF LONGER MATURITIES. THIS COULD BE AN AGREED SCALE OF ESCALATION DESIGNED TO REFLECT MARKET RATES FOR HIGHER MATURITIES.

2. AN AGREEMENT WITH RIGID MATURITY LIMITATIONS WITH AN EXPLICIT EXCEPTION AT A RATE ABOVE THE MINIMUM FOR LARGE PROJECTS DEFINED AS \$50 MILLION IN EXPORT VALUE. EXIMBANK WOULD TAKE A RESERVATION TO THIS COMMITMENT WHICH, IN THE CONTEXT OF A GENTLEMEN'S AGREEMENT, WOULD SAY THAT IT IS THE INTENTION OF THE BANK'S DIRECTORS TO FAITHFULLY ADHERE TO THESE MATURITY LIMITATIONS UNLESS THEIR STATUTORY OBLIGATION, AS THEY INTERPRET IT, SHOULD REQUIRE A LONGER MATURITY. BY WAY OF ILLUSTRATION, THIS MIGHT BE OCCASIONED BY THE EMERGENCE OF A NEW TECHNOLOGY OR A PROJECT SO UNUSUAL AS TO BE OTHERWISE NOT FINANCABLE OR OF COMPELLING NATIONAL INTEREST NOT CAPABLE OF BEING DEFINED IN ADVANCE. THIS RESERVATION, WOULD NOT BE UTILIZED MERELY TO COMPETE FOR ESTABLISHED EXPORT BUSINESS. TO ASSURE THIS, ITS UTILIZATION WOULD REQUIRE CONSULTATION AND APPROPRIATE NOTICE. IN THE ABSENCE OF THIS KIND OF A RESERVATION, THE ONLY ASSURANCE THAT EXIMBANK DIRECTORS HAD NOT CONTRAVENED THEIR STATUTORY DIRECTIVE, IN AGREEING IN ADVANCE NOT TO FINANCE PROJECTS WHICH CANNOT BE FINANCED WITHOUT MATURITIES BEYOND THOSE STIPULATED IN A BINDING AGREEMENT, WOULD BE RATIFICATION OF THE GENTLEMEN'S AGREEMENT AS A TREATY SO THAT IT WOULD SUPERCEDE ANY OBLIGATION OF DOMESTIC LAW.

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WHEN THE CONTINUATION OF EXIMBANK'S STATUTORY DIRECTIVE WAS DEBATED IN THE CONGRESS 6 MONTHS AGO, WE DID SAY THAT, IN IMPLEMENTING IT, INTEREST RATES WOULD BE SET IN LINE WITH THE COST OF MONEY. WE DID NOT INDICATE ANY INTENTION OF ABANDONING A 40-YEAR OLD PRACTICE OF SETTING MATURITIES ACCORDING TO PROJECT ECONOMICS. TO LIMIT THAT PRACTICE ON PROJECTS BELOW "\$50 MILLION" WITH A RESERVATION FOR VERY SPECIAL SITUATIONS IS AS FAR AS I WOULD FEEL JUSTIFIED IN GOING. END QUOTE. GREENWALD

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